



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

HD:hd

Docket No: 06727-99

25 May 2000

LCDR [REDACTED]

Dear Commander [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 18 May 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinions furnished by the Navy Personnel Command dated 12 February and 22 March 2000, copies of which are attached. The Board also considered your letter dated 25 April 2000, with enclosure, and the precept for the Fiscal Year (FY) 99 Reserve Line Commander Selection Board with enclosure (1) (board membership).

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

In finding the contested concurrent fitness report should stand, the Board substantially concurred with the advisory opinion dated 12 February 2000. They noted that Naval Military Personnel Command Instruction 1611.1 neither expressly permitted nor prohibited a regular reporting senior's not forwarding a duly authorized concurrent fitness report to the Naval Military Personnel Command. Therefore, they were unable to find your regular reporting senior was mistaken in believing he had to forward the contested report. They noted, in this regard, that he does not clarify the source of the advice he says he has received to the effect he did not have to forward the report.

In finding your requests to remove your failures by the FY 99 and 00 Reserve Line Commander Selection Boards and grant you a special selection board should be denied, the

Board substantially concurred with the advisory opinion dated 22 March 2000. Further, notwithstanding the statement of 22 September 1999 from a member of the panel of the FY 99 promotion board that considered you, they were unable to find that board considered you unfairly as a result of prior action to remove your first two failures of selection to commander. In this connection, they noted he concedes you were "not technically" in a failed of selection status, although the promotion board members could easily have determined that you were senior enough to have been eligible for consideration previously. While he states his belief that this prejudiced the board, "consciously or unconsciously," against you and that you were "viewed as a previously failed of selection candidate," they considered this to be speculation on his part.

In view of the above, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosures



DEPARTMENT OF THE NAVY
NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000

6727-99

1611
PERS-311
12 February 2000

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Via: PERS/BCNR Coordinator (PERS-00ZCB)

Subj: LCDR [REDACTED]

Ref: (a) NAVMILPERSCOMINST 1611.1 Report on the fitness of officers

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests the removal of his concurrent fitness report for the period 8 October 1984 to 12 April 1985, removal of two failure to select, and to convene a special selection board for Commander.

2. Based on our review of the material provided, we find the following:

a. A review of the member's headquarters record revealed the report in question to be on file. It is signed by the member acknowledging the contents of the report and his right to submit a statement. The member's statement and endorsements are properly reflected in the member's digitized record.

b. The fitness report in question is a Detachment of Individual/Concurrent report submitted upon the member's transfer back to his original command. Although reference (a) does not state concurrent fitness reports are mandatory or have to be forwarded to BUPERS, it does not state concurrent reports cannot be submitted.

c. Reference (a), states that "Concurrent reports are considered desirable when the officer cannot be observed over an extended period of time by the regular reporting senior". LCDR [REDACTED] for over six months. The concurrent reporting senior may elect to submit a fitness report or provide information on the officer's performance to the member's regular reporting senior. In this case the concurrent reporting senior, Captain [REDACTED] elected to submit a fitness report. The fact that different reporting seniors may view the performance of an officer differently is well established.

d. For information, if the temporary duty reporting senior elects to write a concurrent fitness report it must be submitted via the regular reporting senior. The regular reporting senior has the option of adopting the concurrent report and converting it into a concurrent-regular report, or the regular reporting senior may simply counter-sign the concurrent report and submit a separate

regular report. The member's regular reporting senior, [REDACTED] those to counter-sign the report and submit separate regular fitness reports.

e. The fitness report has been in the member's record for over fourteen years and the member has been promoted with the fitness report in his record. Neither the member nor the reporting senior has made any effort to correct the fitness report before now.

f. It is clear that the sole reason for the petition is the member's failure of selection. It has long been our position that failure of selection is not sufficient reason to remove a fitness report or supplementary material.

g. Further review of the member's record revealed the fitness report for the period 28 March 1997 to 30 September 1997 missing from the member's record. The member provided a copy with his petition and we have placed it in the member's digitized record. Since the member is before the Commander selection board convening 28 February 2000, we provided Selection Board Support (PERS-321) a copy of the fitness report.

h. The member does not prove the report to be unjust or in error.

3. We recommend the member's record remain unchanged.

[REDACTED]
Head, Performance
Evaluation Branch

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DEPARTMENT OF THE NAVY
NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000

6727-99

5420
PERS-86
MAR 22 '00

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF NAVAL RECORDS

Via: Assistant for BCNR Matters (PERS-00ZCB)

Subj: REQUEST FOR COMMENTS AND RECOMMENDATION IN CASE OF
LIEUTENANT [REDACTED] USNR, [REDACTED]

Ref: (a) BCNR memo 5420 PERS-00ZCB of 24 Feb 00
(b) SECNAVINST 1401.1B

Encl: (1) BCNR File 06727-99
(2) NAVPERSCOM (PERS-311) memo 1611 of 12 Feb 00

1. Per reference (a) we are returning enclosures (1) & (2). The member requests the removal of his concurrent fitness report for the period 8 October 1984 to 12 April 1985, removal of two failures to select, and to convene a special promotion selection board for Commander. Based on the following observations we recommend that you disapprove Lieutenant Commander [REDACTED] requests.

2. Lieutenant Commander [REDACTED] claims in his letter (Enclosure (1)) that both selection boards may have committed a material error by including an adverse 1984 concurrent fitness report in their deliberations. He maintains that this report should not be in his record as concurrent reports are not mandatory. Further, Lieutenant Commander [REDACTED] claims that the FY-99 board lacked other material information because his record was missing a fitness report that he was unaware of. This was due he says to only having two weeks from the approval of his last BCNR until the convening of the FY-99 board, not giving him enough time to order a microfiche. Lastly, he claims that the FY-00 board would have been biased by his being above zone as well as by the concurrent report.

3. The response by PERS-311 (Enclosure (2)) answers the question of the admissibility of the concurrent fitness report. Although concurrent reports are not "mandatory", they note in paragraph 2(c) that "Concurrent reports are desirable when the officer

Subj: REQUEST FOR COMMENTS AND RECOMMENDATION IN CASE OF
LIEUTENANT COMMANDER [REDACTED]

cannot be observed for over an extended period of time by the regular reporting senior. LCDR [REDACTED] was TAD for over 6 months." Paragraph 2(e) states that "the fitness report has been in the member's record for over fourteen years and the member has been promoted with the report in his record." The member and the regular reporting senior have not attempted to remove this report from the record. In paragraph 2(h) PERS-311 states that "The member does not prove the report to be unjust or in error". PERS-311's recommendation in paragraph 3 is that the record remain unchanged. We concur.

4. Lieutenant Commander [REDACTED] was properly considered during the FY-99 and FY-00 Commander Line Promotion Selection boards. In his BCNR request (enclosure (1)) [REDACTED] said that two weeks did afford him enough time to compose and submit a letter to the FY-99 board. As he did not have a recent microfiche, due diligence would dictate he include his most recent fitness reports as a precaution. LCDR [REDACTED] stated in his request that he did ensure his record was complete for the FY-00 board. Lieutenant Commander [REDACTED] record as reviewed by the FY-99 and FY-00 Commander Line Promotion Selection Boards was an accurate portrayal of his career. As there is no basis for removal of the concurrent report there is likewise no basis to remove the two failures to select. Without providing substantial evidence that the board made an error in fact or acted contrary to law, there is no basis for convening a special promotion selection board.

5. Lieutenant Commander [REDACTED] be justifiably proud of his record and years of contributions; the negative response to his petition does not detract from his honorable service to this nation and the United States Navy.

[REDACTED]

Director, Reserve Officer
Promotions, Appointments, and
Enlisted Advancement Division

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